

TITLE 2 – PUBLIC MORALS, SAFETY AND WELFARE
DIVISION 3: FIRE PROTECTION AND EXPLOSIVES AND HAZARDOUS
MATERIALS
Chapter 4: AUTHORITY AND ADMINISTRATION FOR HAZARDOUS MATERIALS.

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23.0401 Intent and Enforcement Authority.

Pursuant to California Health and Safety Code Section 101025 et seq. (County Health Officers); Section 101075 et seq. (Local Health Emergencies); Section 101375 et seq. (County Health Administration for Cities); Section 25100 et seq. (Hazardous Waste Control); Section 25200 et seq. (Permitting of Facilities); Section 25280 et seq. (Underground Storage of Hazardous Substances); Section 25260 et seq. (Unified Agency Review of Hazardous Materials Release Sites); Section 25299.10 et seq. (Petroleum Underground Storage Tank Cleanup); Section 25500 et seq. (Business and Area Plans); Section 25404 et seq. (Unified Hazardous Waste and Hazardous Materials Management Regulatory Program); Public Resources Code Section 21000 et seq. (California Environmental Quality Act); Water Code Sections 13304 and 13305 (Remedial Action by Government Agencies); Penal Code Section 370 et seq. (Public Nuisance); Government Code Section 25485 (Abatement of Nuisance); California Code of Regulations (CCR) Title 22 Section 66001 et seq. (Hazardous Waste Management); CCR Title 23 Section 2610 et seq. (Underground Storage Tank Regulations); 42 United States Code (USC) Section 6901 et seq. (Resource Conservation and Recovery Act); and other relevant federal and state authority, this jurisdiction has found that the public's interest will be best served by all hazardous material, hazardous waste, underground storage and related environmental protection programs within the borders of San Bernardino County being enforced and administered through the County Consolidated Fire District, hereinafter known as the San Bernardino County Fire Department, Division of Hazardous Materials. The Fire Chief and Investigative Officers of San Bernardino County Fire Department, Division of Hazardous Materials are hereby authorized to enforce and administer all federal, state, and local laws pertaining to hazardous

materials and hazardous waste including those listed above and all provisions of Chapters 4 (Authority and Administration), 5 (Public Nuisance Abatement), 6 (Permits, Inspections and Hearing Procedures) and 7 (CUPA Permit Elements) of Division 3 of Title 2 of the San Bernardino County Code.

Ordinance 3846 (2002);

23.0402 Scope of Authority.

Authority is granted to the San Bernardino County Fire Department, the County Fire Chief and Investigative Officers of the Division of Hazardous Materials to enforce California Health and Safety Code Section 101075 et seq. (Local Health Emergencies) Section 25404 et seq. (Unified Hazardous Waste and Hazardous Materials Management Regulatory Program); Section 25100 et seq. (Hazardous Waste Control); Section 25280 et seq. (Underground Storage of Hazardous Substances); Section 25299.10 et seq. (Petroleum Underground Storage Tank Cleanup); Section 25500 et seq. (Hazardous Materials Release Response Plans and Inventory); Titles 19, 22, and 23 of California Code of Regulations, and as enumerated in Section 23.0401 of this Code. During declared states of emergency the Local Public Officer shall have supervision of and control over the Division of Hazardous Materials and its personnel. The County Fire Department Division of Hazardous Materials shall enforce all California Health and Safety Code provisions pertaining to hazardous materials and hazardous wastes as enumerated in Section 23.0401 of this Code, within available resources. The County Consolidated Fire District may charge reasonable fees for its services, including fees as are prescribed by Chapter 2 of Division 6 of Title 1 of the San Bernardino County Code.

Ordinance 3846 (2002);

23.0403 Definitions.

Definitions herein shall supplement all definitions throughout the California Health and Safety Code and elsewhere in state laws and regulations pertaining to hazardous materials, hazardous waste and toxics control.

- (a) "Chief" means the San Bernardino County Fire Chief or Fire Marshall.
- (b) "Code" means the San Bernardino County Code.
- (c) "Contingency Plan" means a document setting out an organized, planned and coordinated course of action in case of fire, explosion or release of hazardous waste or hazardous waste constituents to air, soil, or surface water that could threaten human health and safety or the environment. Such document shall be consistent with Section 66265.50 et seq. of Title 22 of the California Code of Regulations.
- (d) "Corrective action" means activities taken to investigate, characterize, evaluate, correct and enforce requirements applicable to address releases of a hazardous waste, hazardous constituents or hazardous substances, as necessary to protect public health and the environment.
- (e) "Certified Unified Program Agency" or "CUPA" means the San Bernardino County Fire Department, Division of Hazardous Materials as the agency defined in Section 15110 et seq. of Title 27 of the California Code of Regulations, that has been certified by the Secretary of the California Environmental Protection Agency to

implement the Unified Program specified in Section 25404 et seq. of the California Health and Safety Code.

(f) "CUPA Permit" means a permit issued pursuant to Section 25404 et seq. of the California Health and Safety Code.

(g) "CUPA Permit Program Elements" means the following six (6) elements that are further defined in Chapter 7 of Division 3 of Title 2 of this Code:

(1) hazardous waste generators and hazardous waste on-site treatment.

(2) underground storage tanks (UST).

(3) hazardous material release response plans and inventories.

(4) California Accidental Release Prevention (CalARP) Program.

(5) above ground storage tanks (spill prevention control and countermeasure plan only).

(6) Uniform Fire Code Hazardous Material Management Plans and Inventories.

(h) "Department" means the San Bernardino County Fire Department.

(i) "Disposal" means any of the following:

(1) the discharge, deposit, injection, dumping, spilling, leaking, placing, pouring or venting of any hazardous waste or material so that the hazardous waste or material or any constituent of the hazardous waste or material is or may be emitted into the air or discharged into or onto any land or waters, including groundwater, or may otherwise enter the environment.

(2) the abandonment of any hazardous waste or material.

(j) "Division" means the Division of Hazardous Materials of the San Bernardino County Fire Department.

(k) "Hazardous Substance" means a substance that presents a threat to the public because of its toxicity, radioactivity, flammability, or other characteristic dangerous to the public health or the environment. It shall also include all hazardous substances so defined by Section 25501(p) of the California Health and Safety Code.

(l) "Investigative Officer" and "Deputy Investigative Officer" means any employee or agent of the San Bernardino County Fire Department, Hazardous Materials Division, who is so designated by the Chief, or who is registered as a Registered Environmental Health Specialist (R.E.H.S.) in the State of California.

(m) "Local Public Officer" means the County Fire Chief or Fire Marshall.

(n) "Operator" means any person or entity engaged in any activity or facility that is subject to the Division's jurisdiction.

(o) "Owner" means any person or entity having a financial interest in any activity or facility that is subject to the Division's jurisdiction.

(p) "Person" includes individuals, businesses, general partnerships, limited partnerships, joint ventures, corporations, state and local governmental entities, the U.S. Government and its agencies, and every other legal entity or any association having legal obligations subject to the provisions of this Code.

Ordinance 3846 (2002);

23.0404 Validity and Severability.

Chapters 4, 5, 6 and 7 of Division 3 of Title 2 of the San Bernardino County Code shall not be in conflict with state or federal law. If any provision of those Chapters or the application thereof is held invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application, and to this end the provisions of those Chapters are severable.

Ordinance 3846 (2002);

23.0405 Existing Law Continued.

The provisions of Chapters 4, 5, 6 and 7 of Division 3 of Title 2 of the San Bernardino County Code, insofar as they are substantially the same as provisions of existing laws and ordinances relating to the same subject matter, shall be construed as restatements, continuations and amendments thereof and not as new enactments.

Ordinance 3846 (2002);

23.0406 No Liability/No Warranty.

The County of San Bernardino, the San Bernardino County Fire Department Division of Hazardous Materials and their employees or agents shall not be held liable for any act or omission to act done in good faith reliance upon state law, or the ordinances and codes of the County of San Bernardino and upon Division policies and procedures. The County of San Bernardino, the San Bernardino County Fire Department Division of Hazardous Materials and their employees or agents shall not be held liable for the negligence of, nor as the guarantor of proper performance by, any person or entity holding any license, permit, certificate, registration, privilege, or other entitlement from the Division.

Ordinance 3846 (2002);

23.0407 Authority to Investigate, Detain and/or Issue Citation and/or Abate a Public Nuisance.

(a) The Chief, and such investigative officers as the Chief designates, shall have authority, at all reasonable times, with consent or a warrant if required, to enter any place, property, enclosure or structure to investigate for violations of Chapter 4, 5, 6 and 7 of Division 3 of Title 2 of the San Bernardino County Code, to abate a public nuisance, to detain for purposes of investigation or to issue a Notice of Violation or a citation in conformance with relevant federal and state laws and ordinances of the County of San Bernardino to any person committing a misdemeanor or infraction offense which is a violation of Chapters 4, 5, 6 and 7 of Division 3 of Title 2 of the San Bernardino County Code.

(b) Each applicant and permittee is subject to periodic unannounced inspections, with consent or a warrant if required, at all reasonable business hours, by the Division's Investigative Officers, and to the collection of evidence, samples, photographs, examination of invoices, and all other reasonable inspection procedures to

determine compliance with all applicable laws and regulations enforced by the Division.
Ordinance 3846 (2002);

23.0408 Interference Unlawful/Criminal Penalties For.

It shall be a misdemeanor for any person or entity to deny access to, interfere with, prevent, restrict, obstruct, or hinder employees or agents acting within the scope of their duty or agency under Chapters 4, 5, 6 and 7 of Division 3 of Title 2 of this Code.

Ordinance 3846 (2002);

23.0409 Public Records.

In accordance with Section 6250 et seq. of the Government Code (California Public Records Act), the Division may charge reasonable fees to cover the costs of copying public records. In the absence of a specific court order, and in accordance with the California Public Records Act, the Division may determine not to disclose to the public any information concerning criminal investigations, epidemiological studies, medical records, private matters, trade secrets, information which would reveal the identity of any person who provided information to the Division in confidence or otherwise violate any person's right to privacy.

Ordinance 3846 (2002);

23.0410 Remedies for Public Nuisances.

In addition to criminal prosecution, civil action, and every other remedy or penalty provided by law, a public nuisance may be abated or enjoined in an action brought by the Division.

Ordinance 3846 (2002);

23.0411 Civil Remedies and Penalties, and Remedies for Fraud or Unfair Business Practices.

(a) It shall be unlawful for any person or entity to violate any provision of Chapters 4, 5, 6 and 7 of Division 3 of Title 2 of the San Bernardino County Code. All enforcement procedures, remedies, and penalties provided by Section 25299 et seq. of Chapter 6.7 of the California Health and Safety Code and provided by Chapters 4, 5, 6 and 7 of Division 3 of Title 2 of the San Bernardino County Code shall apply to any person who:

(1) fails to obtain all necessary permits required for installation, operation, up-grade, permanent closure, or removal of underground storage tanks, or for other CUPA Permit Elements as required.

(2) operates without making payment of any required fees. Such person or entity shall be guilty of an infraction or misdemeanor as specified in Section 23.0412 of this Code.

(3) fails to submit a work plan or provide required notifications of commencement of work to the Division prior to the beginning of any phase of corrective action or interim remedial action.

(4) fails to implement any phase of corrective action as required by law, regulation, ordinance or pursuant to conditions set by the Division.

(5) fails to submit, within thirty (30) calendar days after requested, a written report of findings at any phase of corrective action.

(6) fails to manage material contaminated with hazardous material or hazardous waste from a release, as prescribed by law, regulation, ordinance, or pursuant to conditions set by the Division.

(b) Penalties under this Section are in addition to, and do not supersede or limit, any and all other legal remedies and penalties, civil or criminal, that may be applicable under Section 25280 et seq. of the California Health and Safety Code or Title 23 of the California Code of Regulations.

(c) Payment of any late fee or penalty established by this County Code shall not relieve a person from the responsibility of correcting any violation of this County Code or from correcting a violation of any other statute or regulation.

(d) In addition to every other remedy or penalty provided by law, the Division may refer suspected fraudulent or unfair business practices as defined in the California Business and Professions Code to the appropriate authority for further investigation and remedies.

Ordinance 3846 (2002);

23.0412 Criminal Penalties.

(a) Unless otherwise provided, any person, firm, partnership, corporation or other entity violating any provision of Chapters 4, 5, 6, or 7 of Division 3 of Title 2 of the Code shall be guilty of an infraction or misdemeanor as hereinafter specified. Each day or portion thereof that such violation is in existence shall be a new and separate offense.

(b) Any person so convicted shall be:

(1) guilty of an infraction offense and punished by a fine not exceeding one hundred dollars (\$100.00) and not less than fifty dollars (\$50.00) for a first offense.

(2) guilty of an infraction offense and punished by a fine not exceeding two hundred dollars (\$200.00) and not less than one hundred dollars (\$100.00) for a second offense.

(3) guilty of a misdemeanor and punished by a fine not exceeding one thousand dollars (\$1,000.00) and not less than five hundred dollars (\$500.00) or six (6) months in jail, or both, for a third or additional offense.

(4) notwithstanding the above, a first or second offense may be charged and prosecuted as a misdemeanor and the offender shall be punished pursuant to (3) above.

(c) Payment of any fine or service of a jail sentence herein provided shall not relieve a person, firm, partnership, corporation, or other entity from the responsibility of correcting the condition resulting from the violation.

(d) In addition to the above penalties, the court may order that the guilty party reimburse the Department for all of its costs of investigating, analyzing, inspecting, abating and prosecuting the enforcement action against the guilty party. The court shall fix the amount of any such reimbursement upon submission of proof of such costs by the Department.

(e) The owner, manager, and operator of every activity or facility subject to Chapters 4, 5, 6, or 7 of Division 3 of Title 2 of the Code shall be responsible for any violation of the provisions of these Chapters by an employee.

Ordinance 3846 (2002);

23.0413 Notice of Lien for Non-Compliance.

Whenever a Notice of Violation or notice of other administrative action has been given, the Investigative Officer may record a "Notice of Lien for Non-Compliance" with the office of the County Recorder of San Bernardino County pursuant to Section 27280 of the Government Code and shall notify the owner of the property of such action. The "Notice of Lien for Non-Compliance" shall describe the location of the property, shall set forth the non-complying conditions, and shall state that any costs incurred by the County, including but not limited to investigative, administrative and abatement costs and attorney fees, as a result of the violation of the San Bernardino County Code, or state law and regulations, may become a lien on the property and that the owner has been so notified. The County Recorder shall record and index the "Notice of Lien for Non-Compliance" in the name of each person and property specified in the action or proceeding. After all violations have been corrected, outstanding fees have been paid, a formal written request for release of the Notice of Lien for Non-Compliance must be submitted by the owner of the property or their authorized representative with the required processing fee to the Division. The Division shall make a determination of whether the property is in compliance. If an inspection is required, a Special Inspection fee will be charged. Once the Division has determined that the property is in compliance, it shall record in the Office of the County Recorder a document terminating the "Notice of Lien for Non-Compliance."

Ordinance 3846 (2002);